

# A Comparative Study of Acceptable Judicial Proceedings in French and English Law and Its Realization in Iran

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It is challenging to definitively determine whether another categorization of judicial proceedings into "acceptable" and "unacceptable" exists. However, the following points can be made: Firstly, the answer is negative, as there is no precedence for such a categorization in the legal literature authored by prominent professors and legal experts in our country. In principle, judicial proceedings should be acceptable and admirable, leaving no room for the recognition of unacceptable or objectionable proceedings. Secondly, the answer is affirmative. This is because, when discussing judicial proceedings deemed acceptable and desirable by the framers of the Constitution and the proponents of the judicial process, it is apparent that there exists a form of proceeding that does not align with the intentions of the lawgiver and is not desirable for the public seeking judicial recourse. Doubts arise because, when examining and scrutinizing the notion of "unacceptable judicial proceedings," resistance is encountered from both judicial authorities and legal scholars. The opposition from the former is seemingly natural, as they view the judicial process in the courts as legitimate and do not tolerate anything to the contrary. From the perspective of the latter, there is a concern that by recognizing unacceptable judicial proceedings, actions within this framework may appear justified, even though such proceedings lack the characteristics, privileges, and status of acceptable judicial proceedings.

**Keywords:** *Judicial Proceedings, Acceptability, Judiciary, Truth Discovery, Conflict Resolution.*

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## 1. Introduction

A court session serves as the battleground for the litigants on one side and the judge, in the position of adjudicating the dispute, on the other. In other words, besides the obligation of the parties involved to present their evidence clearly, simply, and based on persuasive arguments to convince the judge and secure a ruling in favor of one party, it is also essential for the judge to

disclose what factors will influence the issuance of the final judgment during the adjudication process. The deviation observed in Iranian judicial proceedings involves the citation of reasons during the issuance of a judgment, which, even if they occurred to the judge during the proceedings, were deliberately kept undisclosed to the parties until the ruling was made. The judge, at various stages—from the adjudication process, through the hearing, to the time of rendering the



judgment—might have discovered reasons for dismissing a claim or convicting the defendant, but failed to articulate them, leaving the litigants suddenly confronted with arguments they had not been previously informed about.

Apparently, this issue was not considered by the drafters of the Iranian Code of Civil Procedure, a matter worth pondering. This is because, in the French Code of Civil Procedure—which inspired the drafting of the Iranian code—such legal provisions have been established.

Why has the Iranian legislator not addressed this matter? Why did they assume that the absence of regulation in this regard would not later pose a problem? And why has this issue been neglected? Although there are no definitive answers to these questions and similar ones, it is clear that reforms are needed in the Iranian Code of Civil Procedure.

This article is unprecedented, novel, and possesses an expert quality. Thus, it may contain some imperfections but has practical value and deviates from the typical theoretical and derivative academic articles.

## 2. Deviation

The word "deviation" is derived from the Arabic root "h-r-f." Synonyms for deviation include distortion, curvature, deflection, deviation, injustice, error, misguidance, aberration, and inclination. Its opposite is rectitude. In Persian, it is synonymous with waywardness, deviation, deformity, and slip. In technical terms, deviation refers to a form of human behavior that diverges from what is considered orthodox or normative. The elements of the above definition are as follows:

The first element is that this reprehensible behavior originates from a human and not a system or object.

The second element is that, to recognize deviation, there must necessarily exist a norm or orthodoxy. The concept of deviation cannot be proposed if the correct path is not identifiable and observable.

Sociologists do not uniformly attribute causes and levels of deviation. Some refer to structural factors on a macro level, others to behavioral factors on a micro level, and some to factors on an intermediate level {Amiri, 2013 #135954}. It must be noted that deviation from acceptable judicial proceedings in the Islamic Republic of Iran does not have structural roots or a foundation at the macro level of society.

The constitutional lawgiver, in Article 156 of the Constitution, assigns the judiciary the responsibility of "...settling disputes and resolving conflicts...".

The purpose of resolving disputes and eliminating conflicts is to definitively determine the rights and responsibilities of the parties, granting rights to the entitled and obligating the non-entitled to fulfill their duties towards the rightful party. If certain contested issues are not clarified during the proceedings, or if the judge fails to address ambiguities and resolve complex matters, and ultimately a judgment is issued that merely closes the case (rather than the dispute), the legislator's intent has not been fulfilled.

The third element is the acceptance of collective wisdom in uncovering corruption (deviation). When it is stated that deviation from the norm is recognizable, and no specific reference group is defined as the standard, it implies that all rational individuals can identify this aberration.

In the dictionary, "discovery" means revelation, exposure, articulation, and unveiling. A discoverer is someone who exposes and speaks openly. In Dehkhoda's lexicon, "discovery" is defined as making something visible and removing its cover (Minhaj al-Arab, Taj al-Arous). This term and its meaning are well-known among Persian speakers and do not require further linguistic analysis {Dehkhoda, 1993 #135955}.

The common feature among all meanings of discovery involves a change in the status of something that existed in the past. We always refer to something presently exposed that existed previously in a different state. This implies that what is discovered was not created but transitioned from concealment and ignorance to exposure and public awareness {Khandani, 2019 #135965; Madani, 1991 #135966; Maten Daftari, 1999 #135967}.

What seems useful to address here is discussing the opposite of discovery, namely "concealment."

Regarding concealment, the reality remains hidden, but it does not transform into a non-reality.

The term "concealment" (pronounced with emphasis and a damma) means to cover, hide, or shelter. In Dehkhoda's lexicon, "concealment" is defined as veiling (Taj al-Masadir, Bayhaqi), abstaining (Nazim al-Taba), and distancing something from visibility.

**Conflict Resolution:** According to Clause 1 of Article 157 of the Constitution, judges are obligated to settle

disputes and eliminate conflicts, which means bringing an end to public disputes.

**Strategy:** Establishing laws or creating precedents to organize affairs and ensure standard judicial conduct within the framework of Sharia, social norms, and adherence to societal standards.

**Implementation of Strategies:** Institutionalizing judicial behavior and aligning court rulings with Sharia, constitutional principles, and the goal of conflict resolution.

**Code of Civil Procedure:** A set of regulations drafted by the legislative branch for implementation in the judiciary by judges, litigants, attorneys, official experts, and law enforcement.

### 3. Acceptable Judicial Proceedings

Acceptable judicial proceedings refer to the process of handling cases in the judiciary by adhering to predetermined standards set by the legislator.

The authority for establishing these standards of acceptable or fair judicial proceedings is, primarily, the Constitution, followed by other relevant laws, and finally, societal norms {Heydari, 2017 #135963}.

#### 3.1. Examples of Acceptable Judicial Proceedings

The criteria for acceptable judicial proceedings are enumerated in Article 176 of the Constitution as follows:

- Independence in handling cases
- Protection of individuals' legal rights
- Responsibility for ensuring justice
- Expeditious handling of cases (eliminating delays in the proceedings)
- Issuance of judgments (finalizing cases)
- Addressing grievances, infringements, and complaints according to the law
- Resolving disputes
- Eliminating conflicts
- Upholding collective rights
- Expanding justice
- Promoting legitimate freedoms
- Oversight of the proper implementation of laws

##### 3.1.1. Explanation of the Above Criteria

#### Independence in Handling Cases

- An acceptable outcome from the adjudication of a case is achieved when the judge acts independently in their judgment and decision-making. Any imposition of opinions or decisions on the judge by the governing authorities or parties to the case leads to a deviation from acceptable proceedings.

#### Protection of Individuals' Legal Rights

- A standard of acceptable judicial proceedings is the protection of individuals' legal rights by the judge, who acts as a representative of the judiciary during the hearing. This correct and principled basis has led to the acceptance of the principle of the admissibility of claims.
- The principle of claim admissibility is one of the governing principles of procedural law. According to this principle, anticipated both in jurisprudence and indirectly in Iranian law, civil courts should overlook minor, remediable defects and guide the case towards addressing its substantive merits (resolving disputes or discovering the truth).
- From a jurisprudential standpoint, hearing a case is obligatory, and a judge is appointed to render judgments, which necessitate hearing claims. Thus, the civil court moves the claim towards admissibility by interpreting the dispute and inviting the claimant for clarification. Even though this principle is not explicitly mentioned in procedural laws in Iran, it can be inferred from Articles 167, 159, and 34 of the Constitution and Article 3 of the Code of Civil Procedure. The legislator implicitly acknowledges the necessity of hearing claims by mandating that the court must act to resolve disputes.
- The prerequisite for adjudicating a legal issue, examining its substance, and resolving conflicts is the acceptance or hearing of claims. Therefore, based on Articles 159 and 34 of the Constitution, claims from individuals who seek justice in court should be considered. These articles emphasize the principle of access to justice, which is intrinsically linked to and supportive of the principle of claim admissibility.

- Indeed, the principle of access to the judiciary, particularly to prosecutors' offices and courts, is a fundamental and preliminary aspect of a fair trial. A fair trial is meaningful only when access to judicial authorities or, in other words, access to justice is ensured {Shams, 2016 #135979}.

### Eliminating Conflicts

Article 156 of the Constitution of the Islamic Republic of Iran emphasizes the resolution of conflicts, even though it does not provide a definition, highlighting it as a primary objective for establishing the judiciary.

The fundamental and aspirational duty of the judiciary is to resolve disputes and eliminate conflicts.

What is explicitly stated in the above article possesses the characteristics of universality, finality, and decisiveness.

To provide a precise definition of conflict resolution, four key points must first be examined:

- The distinction between resolving disputes and eliminating conflicts
- The difference between conflict resolution and conflict elimination
- The rationale for using the terms "resolving disputes" alongside "eliminating conflicts"
- The reason why the legislator did not use the established term "conflict resolution"

To address the first point, two clarifications are necessary:

Firstly, although the context of this article is legal, the framers of Article 156 of the Constitution did not distinguish between the civil and criminal responsibilities of the judiciary.

In the first clause of the article, both civil and criminal duties are enumerated together. Although this flaw is attributable to the legislator and is somewhat excusable, it subtly suggests that the lawgiver allocated "resolving disputes" to civil matters and "eliminating conflicts" to criminal cases.

From this perspective, the combination of "resolving disputes" and "eliminating conflicts" is defensible. The logical conclusion is that these terms do not differ significantly but reflect the lawgiver's awareness of the differences between civil and criminal cases.

Secondly, despite extensive research, the author has not encountered any writing that distinguishes between the two phrases. Thus, one could argue that "resolving

disputes" and "eliminating conflicts" do not differ from the term "conflict resolution."

The second point is also clear: although the phrase "eliminating conflicts" pertains to criminal cases and is the opposite of civil disputes, no legal scholar has recognized a difference between the two phrases in the context of criminal cases.

Regarding the third point, the only justification for equating "resolving disputes" and "eliminating conflicts" is the differentiation between civil and criminal cases. Otherwise, it is inappropriate for the legislator to use synonymous terms in drafting laws.

As for the fourth point, criticism of the Constitutional Drafting Assembly (Constitutional Assembly of Experts) is understandable. Despite the presence of prominent religious scholars, members from other non-legal fields, even in leadership positions, were also involved in drafting the Constitution. Ultimately, it should be understood that "eliminating conflicts" has the same meaning and concept as "conflict resolution" and was not intended to convey anything different.

In essence, regarding conflict resolution, the key criterion is the admissibility of claims. If a claim is not admissible, regardless of the judge's ruling, it does not fall under this category and is not protected.

### 3.1.2. Comparative Analysis with Other Countries

France and England are examined here as prominent representatives of civil law and common law, respectively.

The new French Code of Civil Procedure grants a broad range of powers to judges in the investigation of case facts. Specifically, the judge may personally order any investigatory action that is legally permissible. The judge may also invite the parties to provide explanations regarding the facts of the case, and may even require one or both parties to appear in person for necessary inquiries.

While at first glance, the topics of conflict resolution and the discovery of truth may seem confined to civil procedure, in French law, this is not necessarily the case. The foundation of conflict resolution is also embedded in the French Civil Code.

Sections of the French Civil Code relevant to conflict resolution:

Article 1366 of the French Civil Code states: The judge may propose that one of the parties take an oath to

condition the judgment on the case (Nouri, Mohammad Ali, translation of the French Civil Code).

A clear translation of the above article would be: If the judge cannot ascertain the truth of a case under review, they may resort to evidence for proving the claim (in this case, an oath) {Zera'at, 2012 #135981}.

Utilizing evidence to conclude a case when the judge is not convinced of one party's claim requires an understanding of the role of evidence in judicial proceedings. In French judicial practice, issuing a ruling on matters that were not raised or discussed during the proceedings is prohibited. The French legislator has imposed this prohibition without hesitation {Estefani, 2004 #135958; Ghamami, 2013 #135959}.

In England, acceptable judicial proceedings are institutionalized in the judicial system based on two highly valuable principles.

First, the availability of continuous appeals against judgments.

All contentious matters, whether civil, criminal, or administrative, fall within the jurisdiction of the High Court of Justice and the Crown Court, which have the right to review and hear appeals at the request of the parties, unless it is assured that the trial in the lower courts is proceeding without issues. These courts are under the supervision of the Court of Appeal and the House of Lords.

In England's new Civil Procedure Rules, courts have been granted new "case management" powers, allowing for faster, fairer, and more effective resolution of cases. Article 2.3.3 of the Civil Procedure Rules stipulates: When the court issues an order on its own initiative (without a party's request), all those who may be affected must be given an opportunity to make representations. The language used by the legislator in this article indicates a significant influence from the right to a fair hearing and principles of natural justice {Gholipour, 2014 #135960}.

Second, the irremovability of judges.

In England, judicial office is for life. A judge can continue serving as long as they are physically capable. Judges are irremovable and can only be dismissed or removed with a formal request and the approval of Parliament. The lifelong tenure and irremovability of judges are features of England's judicial organization, ensuring that the judiciary has the necessary authority to administer justice in an unbiased and pressure-free environment.

When a judge, without fear of being dismissed, conducts any necessary investigation and discovers the truth, the highest level of acceptable judicial proceedings is achieved.

To adhere to strategic procedural principles in English law, the Civil Procedure Rules enacted in 1998 gave judges a more active role in case management. The new Civil Procedure Code introduced the concept of judicial case management into English substantive law.

Preparing cases for hearings under the supervision of a judge empowers the court to ensure that both parties have equal access to judicial resources during the trial (a requirement of acceptable proceedings). Additionally, pre-trial preparation and investigation are conducted under judicial oversight, significantly reducing court costs by eliminating unnecessary actions and shortening the investigation period.

Each case is managed based on the subject of the dispute, the amount in controversy, the importance of the claim, the complexity of the issues, and the financial status of each party. The judge must ensure that the case is adjudicated promptly and correctly. The judge is now not only responsible for the judgment but also for distributing judicial resources (including time allocated for each case) among the parties. Resource distribution must consider the specific features of each case while taking into account other pending cases to ensure that resources are not disproportionately allocated to specific disputes.

It is important to note that the principle of proportionality in civil procedure in English law has significantly diverged from the traditional adversarial concept due to these changes.

Section 31 of the English Civil Procedure Rules (1998) establishes a two-stage process for disclosure and examination of evidence, including the preliminary exchange of lists revealing the existence of relevant documents in each party's possession, followed by the presentation of those documents for review and copying. Acceptable judicial proceedings require that even if neither party specifically emphasizes certain documents, the judge cannot base a judicial decision on facts that were not raised in the discussion.

In England, the goal of efficient and acceptable judicial proceedings is central to recent reforms in civil procedure. Civil justice is viewed as an essential public service that must be effective, efficient, and fair

(acceptable). Active case management must be applied where necessary, and court actions should facilitate swift, simple, smooth, cost-effective, and predictable adjudication. Moreover, management must prevent any party from abusing procedural rules and eliminate delays. This exemplifies the highest standard of acceptable proceedings.

### 3.2. *Strategies for Developing Acceptable Judicial Proceedings in Iran*

The development and promotion of acceptable judicial proceedings require both external and internal efforts within the judiciary.

Externally, the legislative branch must leverage the experiences of prominent countries in acceptable judicial proceedings, such as France and England, to ensure collaboration between judges and litigants in achieving fair trials. In this regard, it is essential to rigorously apply the principles of adversarial and confrontational proceedings, ensuring that judges are not free to issue rulings based on evidence not discussed during the hearing. Such deviations from acceptable proceedings not only infringe on the rights of the litigants but also burden the judiciary with numerous additional cases.

Internally, cultural and infrastructural efforts must be made to foster collaboration between litigants.

This matter will be addressed under two topics: the necessity of collaboration and examples of collaboration.

#### 3.2.1. *The Necessity of Collaboration*

Unless litigants in civil cases engage in the necessary collaboration and the principles of adversarial and confrontational proceedings are observed, judgments issued by the civil courts of the Islamic Republic of Iran will not result in acceptable judicial outcomes.

If a judge handling a civil case does not present their interpretations of the documents, evidence, and statements of the litigants during the hearing and instead, based solely on a piece of evidence, later rejects the petition or issues a conviction without prior disclosure, the judicial system will remain entangled in cases.

Certainly, the evidence that a judge discovers from written or oral arguments and uses to reject a petition or close a case is often insufficient to conclusively resolve

the dispute. The parties will likely have to initiate new cases, incurring additional time and costs.

The proposed addition of Article 84 bis to Article 84 of the Code of Civil Procedure, which is currently under review in the Islamic Consultative Assembly, indicates that this issue is widespread and has prompted legislative action.

A review of Iran's Code of Civil Procedure reveals that while some provisions suggest a theory of collaboration, these do not establish collaboration as a principle in the Iranian procedural system. Comparative studies of the civil procedures in France, England, and several Arab countries show that elements of this theory are present and valid.

Implementing the theory of collaboration can elevate our judicial system, reduce delays, expedite proceedings, and thus lead to the administration of justice. Consequently, this would foster a sense of justice in society and increase public satisfaction with the judicial system. The speed of justice and the concept of justice are two independent values, each desirable in any judicial system and society. However, a challenge arises because the judge must acknowledge the existence of deviations from acceptable judicial practices.

The term "presiding judge" includes both the judge at the trial stage and the judge at the appellate or cassation stage.

The Iranian judicial system recognizes a two-stage process. In this system, if the trial judge issues a judgment based on matters not raised or discussed during the proceedings (including from the time the case is filed with the court, the judge's review of the case, the hearing(s), and the period between the close of the proceedings and the issuance of the judgment), this is considered a deviation from acceptable judicial practices as viewed by both the lawgiver and the litigants. In such cases, hope lies in the appellate or cassation stages.

However, if higher-level judges—often the same judges who handled the initial trial—do not view this as a deviation, progress is unlikely.

In other words, the roadmap in the Islamic Republic is structured so that the determination of whether judicial principles have been adhered to or violated is ultimately left to the judgment of the very judge who may be accused of deviation.

The Constitution of the Islamic Republic of Iran, which emerged from the dissolution of the monarchy, was

designed to prevent the executive branch's influence over the judiciary by granting judges the authority to interpret legislative laws (Article 73 of the Constitution). Thus, judges who are tasked with enforcing laws are also the interpreters of deviations from procedural laws. In the future, these principles will undoubtedly require reform.

One might argue that if this fundamental principle is violated, there is recourse to file a complaint against the judge in the Disciplinary Court for Judges.

However, this assumption is flawed for two reasons:

Firstly, in the Law on Judicial Misconduct and related legislation, such actions are neither criminalized nor considered violations.

Secondly, the final decision-making authority on such matters remains within the judiciary, with the judge still part of the same system.

### 3.3. *Examples of Collaboration*

To foster collaboration between judges and litigants for achieving acceptable judicial proceedings, the following proposals should be implemented:

#### **A. Promoting and Developing Pre-Court Resolution Mechanisms**

Any mechanism established before court proceedings that aims to inform the parties about legal essentials, as well as the rights and obligations of the judge and the litigants, is justified and worthy of investment. If the Dispute Resolution Council is equipped with adequate specialists, tools, and resources to comprehensively educate the parties about the implications and outcomes of the case, it would be a practical, beneficial, and constructive stage.

#### **B. Promoting and Developing Mediation**

Similar to criminal cases, establishing and expanding the role of skilled, knowledgeable, and experienced mediators to uncover the truth and resolve conflicts is desirable. This would prevent the issuance of legal decisions that are often irrevocable or create legal deadlocks.

#### **C. Necessity of Mandatory Legal Representation**

Requiring individuals seeking justice to first consult with a lawyer and become informed about their rights, as well as the duties of the judge and the opposing party, would prevent the filing of frivolous lawsuits.

#### **D. Legal Insurance**

Considering the high costs of hiring lawyers, the establishment of support funds to cover attorney fees, which could be repaid in installments by the clients, would greatly assist those who are entitled to legal rights but lack the financial means to hire legal representation.

#### **E. Expanding Advisory Centers**

The expansion of professional and reasonably priced advisory centers would improve the legal literacy of those seeking judicial services.

### 4. **Conclusion**

While the legislator's intent to achieve conflict resolution based on discovering the truth and safeguarding the rights of the plaintiff and defendant in civil cases is clear, as reflected in Article 199 of the Code of Civil Procedure, it is not prudent to give judges unrestricted discretion in judicial proceedings.

Over the past 22 years since the 2000 amendments to the Code of Civil Procedure, there has been regression, inactivity, and even a disregard for Article 199. The reasons for this include the pervasive influence of the rule prohibiting the collection of evidence by judges, the heavy caseload, the volume of cases referred to the courts, the lack of motivation and insufficient knowledge among some judges, and resultant judicial inaction.

The legislator of 2000 did not feel compelled to create the necessary framework to inspire an internal drive among judges for acceptable judicial proceedings, which has been the root of many issues. The proposed addition of Article 84 bis to Article 84 of the Code of Civil Procedure is a positive step, and if implemented, it will facilitate the discovery of truth and conflict resolution as intended by the legislator.

Currently, judicial orders for dismissing petitions due to deficiencies in the submitted documents frequently prevent judges from addressing the merits of cases. This issue would be resolved with legislative amendments. Reforms in the Code of Civil Procedure are so impactful that strict and precise adherence, without exceptions, will lead to acceptable judicial proceedings and ultimately the administration of justice.

The outcome of acceptable judicial proceedings is conflict resolution, meaning the end of enmity and disputes between the parties. Conflict resolution necessarily involves the court addressing the substance of the dispute, embodying the principles of adversarial and confrontational proceedings.

However, conflict resolution is sometimes used by judges as a pretext to close cases without delving into their merits. As a result, in complex civil cases, not only is the truth not uncovered, but conflict resolution, as enshrined in the Constitution, is also not achieved.

Rulings from some civil court branches not only fail to protect the rights of the plaintiff but also leave the defendant uncertain about their obligations concerning the case and the plaintiff.

The issue lies in the fact that the legislator did not prepare the judiciary for the necessary reforms to Article 199 of the Code of Civil Procedure. Additionally, the rule prohibiting the collection of evidence protects the rights of litigants, preventing judicial overreach.

Assuming that the court's sole duty is to resolve conflicts between the parties and considering that the effects of the court's ruling are limited to the litigants, it can be argued that the more adversarial the civil proceedings, the more acceptable they become.

Investigations and measures ordered by a judge based on Article 199 of the Code of Civil Procedure should be conducted in an adversarial setting, with both parties being informed of and involved in the process.

#### Authors' Contributions

Authors contributed equally to this article.

#### Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

#### Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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#### Declaration of Interest

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#### Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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